

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

In the Matter of)	
)	
VONAGE HOLDINGS CORPORATION)	
)	WC Docket No. 03-211
Petition for Declaratory)	
Ruling Concerning an Order)	
of the Minnesota Public)	
Utilities Commission)	

REPLY COMMENTS OF
THE OREGON TELECOMMUNICATIONS ASSOCIATION
AND THE WASHINGTON INDEPENDENT TELEPHONE ASSOCIATION

INTRODUCTION

The Oregon Telecommunications Association ("OTA") and the Washington Independent Telephone Association ("WITA") together file these Reply Comments. OTA and WITA are trade associations whose membership consist primarily of incumbent local exchange carriers.

The Reply Comments are submitted pursuant to the Federal Communication Commission's ("Commission") Wireline Competition Bureau Public Notice issued September 26, 2003. Specifically, the Commission sought comment on the Petition filed by Vonage Holdings Corporation ("Vonage") requesting that the Commission preempt an order of the Minnesota Public Utilities Commission requiring Vonage to comply with state laws governing the provision of telecommunications service. Vonage claims that it is a provider of information services and is not a telecommunications carrier or common carrier subject to Title II of the Communications Act of 1934. Vonage seeks a ruling from the Commission that certain E-911 requirements imposed by the Minnesota Commission are in conflict with federal policies. Vonage also states that preemption is necessary because of the impossibility of separating the Internet, or any service offered over it, into intrastate and interstate

components.¹ In its Petition, Vonage contends that all of its customers must provide their own computer equipment and dedicated broadband connection to the Internet. Vonage states that it performs a net protocol conversion that "bridges" the incompatible formats of the Internet and the public switched telephone network. Vonage argues that under the Computer II decision, its service is an information service and is not subject to common carrier regulation.²

Many parties filed opening comments on or about October 27, 2003. Not surprisingly, the comments fall into two broad categories. Many commenters, including several state commissions, urge the Commission not to grant the Petition and to address voice over Internet protocol ("VoIP") issues in a more generic proceeding.³ In the other category are entities that hold themselves out as information service providers. These entities tended to support the relief sought by Vonage.⁴

OTA and WITA urge the Commission to heed the comments of those that say granting Vonage's Petition would be a

¹ Vonage Holdings Corp. Petition for Declaratory Ruling Concerning an Order of the Minnesota Public Utilities Commission, WC Docket No. 03-211 at 1 (filed September 22, 2003).

² Id. at 27-31.

³ See, e.g., Comments of the New York State Department of Public Service and the Comments of the Iowa Utilities Board.

⁴ Comments of 8x8, Inc.

mistake. OTA and WITA also agree with the comments that a more generic docket addressing VoIP issues in full should be opened immediately. OTA and WITA commend the Commission's recent commitments to hold a workshop on December 1, 2003 and then to immediately move into a rulemaking. In light of that commitment, the Vonage Petition should be denied.

COMMENTS

The VoIP issue is the most critical issue facing telecommunications today. Major carriers such as AT&T and MCI have announced their intention to move their traditional long distance traffic to an Internet protocol platform. Will they then claim that their traffic is not subject to the traditional inter-company compensation mechanisms, such as access charges?⁵ Indeed, AT&T has a docket pending before this Commission seeking just such a result. See, Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges, WC Docket No. 02-361 (filed October 18, 2002). Have no doubt that should the Commission rule in favor of AT&T for the services described in AT&T's Petition, AT&T

⁵ Not surprisingly, MCI argues in this docket that VoIP traffic should not be subject to access charges. Joint comments of MCI and Comptel at p. 13.

would advance the preposition that other IP-based services are also exempt from access charges, including what has traditionally been its ordinary long distance services soon to be carried on an IP platform.

In a very recent development, the November 20, 2003 issue of the Denver Post contains an article describing Qwest's plans to begin offering VoIP services in Minnesota, with the intent to roll it out in other states by March or April. A portion of the article states that Qwest anticipates that customers will end up paying twenty five percent less for VoIP services than traditional phone service because VoIP is an unregulated service, not subject to regulatory fees and taxes. Obviously, these comments raise serious USF and other issues. There is an immediate need to address these issues.

The immediate need to address these issues is illustrated by activity that is taking place in the state of Washington. Given the current uncertainty surrounding VoIP, a phone-to-phone service provider, named LocalDial Corporation ("LocalDial") in Washington is claiming that it is not subject to the Washington Commission's regulation and not subject to intrastate access charges for its

intrastate long distance traffic.⁶ LocalDial's operations have cost WITA's member companies over 1.8 million dollars in lost intrastate access revenue to date.⁷ This is one provider, in one area, that is seeking to avoid access charges on the theory that it is a VoIP provider and hence an information service provider exempt from access charges.

WITA's members are all rural telephone companies. They serve primarily rural and high cost areas. Given the short length of time of LocalDial's operations and the affect those operations are having on the small, rural carriers, the importance of addressing the issue immediately cannot be underscored enough.⁸ OTA and WITA urge the Commission to move forward very quickly to address VoIP issues and inter-company compensation.⁹

It is the position of OTA and WITA that the comments of those taking the position that where there is no net change in protocol, the entity providing the service is not

⁶ Washington Exchange Carrier Association, et al. v. LocalDial Corporation, Docket No. UT-031472.

⁷ The lost interstate access revenue is probably in the same range. LocalDial is also operating in Oregon, but the calculations have not been completed for Oregon.

⁸ The Comments of the National Association of State Utility Consumer Advocates ("NASUCA") point out the potential effect on local rates that a total bypass of access charges could produce. NASUCA Comments at p. 14.

⁹ VoIP services do not change the cost of the LEC whose facilities they use, and, in fact, can increase the costs through increased volumes of traffic.

an information service provider are correct.¹⁰ This is a functional approach which points towards classifying a service based upon what it does, not the type of facilities used. As stated by the National Telecommunications Cooperative Association: "A telecommunications service is a telecommunications service regardless of whether it is provided using the PSTN, the Internet, wireless, cable, satellite or some other infrastructure such as VOIP. Its classification should depend on the nature of the service being offered to customers."¹¹ As pointed out by TCA, "Vonage's supposed protocol conversion is nothing more than what is done by incumbent LECs today that employ digital switching...."¹²

Further, this functional approach is consistent with marketplace representations. For example, Vonage is holding itself out as providing a telecommunications service. Sprint points this out in their comments by taking excerpts from Vonage's web site.¹³ Those excerpts from the Vonage web site describes Vonage's service as "an all-inclusive home phone service that replaces your current

¹⁰ See, e.g., Comments of CenturyTel at p. 11.

¹¹ National Telecommunications Cooperative Association Initial Comments at p. 3.

¹² Comments of TCA at p. 3.

¹³ Comments of Sprint Corporation at p. 5.

phone company. This is like the home phone service you have today - only better."

LocalDial makes many of the same claims at their web site (www.888localdial.com). For example, LocalDial states "LocalDial provides unlimited long distance calling for a low flat rate." The web site goes on to describe LocalDial's service as "an easy-to-use supplemental phone service for domestic long distance calling."

In their comments, the Minnesota Commission makes a very astute observation: "[I]f Vonage is not a phone company, then why is it allowed to market itself as such."¹⁴

Beyond inter-company compensation issues, there are other very important issues that need to be addressed related to VoIP services. These include 911 issues recognized by the Minnesota Commission and others.¹⁵ They also include CALEA issues.¹⁶ Universal service policies are affected by such operations.¹⁷

¹⁴ Comments of the Minnesota Public Utilities Commission at p. 4, raising issues of consumer protection. The same comment is equally applicable to LocalDial's operations.

¹⁵ See, Comments of the Washington Enhanced 911 Program.

¹⁶ See, Joint Comments of the United States Department of Justice and the Federal Bureau of Investigation.

¹⁷ See, e.g., Comments of the California Public Utilities Commission at 17 and 20. See, also, Comments of TCA at p. 4.

CONCLUSION

OTA and WITA join in the recommendations that the Commission deny Vonage's Petition. OTA and WITA also join in the recommendations that the Commission move expeditiously to address the regulatory status of VoIP services for interstate communications purposes. OTA and WITA further recommend that the FCC rule that where there is no net protocol conversion, a voice call that is carried by Internet protocol is a telecommunications service and that the states are free to apply their regulatory authority as they would to any other telecommunications service.

Respectfully submitted this 24th day of November,
2003.

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